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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 471 of 2026
Reserved on: 29.05.2026
Date of Decision: 19.06.2026

Bhagmal ...Petitioner

Versus

Usha Guleria ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] No

For the Petitioners : Mr Sanjeev Kumar Suri, Advocate

For the respondent : None

Rakesh Kainthla, Judge

The petitioner has filed the present petition for setting aside the judgment dated 30.08.2025 passed by the learned Additional Sessions Judge, Dehra (learned Revisional Court), vide which the judgment dated 21.05.2019 passed by the learned Additional Chief Judicial Magistrate, Dehra, District Kangra (learned Trial Court) was upheld. *(The petitioner hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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2. Briefly stated, the facts giving rise to the present petition are that the petitioner filed a petition under Section 125 of the Code of Criminal Procedure (Cr.P.C.) for maintenance of ₹1,00,000/- per month. It was asserted that the marriage between the petitioner and the respondent was organised as per Hindu rites and customs on 09.06.1980. Manoj and Mukesh were born to the parties. Manoj died in an accident, and Mukesh is residing with the respondent. The respondent used to abuse the petitioner and make false allegations regarding her character. The petitioner won the election of Zila Parishad Kangra in December, 1995. Many people started visiting the petitioner to solve their problems. The respondent became infuriated and prevented the petitioner from talking to any person. The petitioner left her matrimonial home in July, 1996. She filed a divorce petition, which was subsequently compromised. The parties started residing together, but the respondent's behaviour did not improve. He filed false cases against the petitioner. The petitioner was also prosecuted in a murder case and was acquitted by the High Court. The respondent married Ishwari Devi, and Muskan was born to them. The petitioner has no means to survive, whereas the respondent is running a wholesale and general trading business at Bhawanagar.

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He is renting out the Hotels and shops owned by him. Hence, the petition was filed for seeking maintenance of ₹1,00,000/- per month.

3. The petition was opposed by filing a reply. However, the relationship between the parties was admitted. It was also admitted that the petitioner became a member of the Zila Parishad in 1995. It was asserted that the petitioner left her matrimonial home without any reasonable cause. She used to live in adultery. The respondent entered into a compromise with the petitioner, but she did not mend her behaviour. Her son saw her in a compromising position with a stranger in the year 1998. The petitioner misappropriated a huge amount of money. She purchased a taxi and started a Public Call Office (PCO). She was prosecuted for murder and was ultimately acquitted. She apologised for her behaviour to the respondent and asked him to marry someone. The respondent brought up his children. Ishwari Devi is not the respondent's wife but a household help. The respondent is an elderly person and is dependent upon his son. He has taken loans of ₹10,00,000/- and ₹8,00,000/- for his children's education. Hence, it was prayed that the present petition be dismissed.

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4. The parties were called upon to produce the evidence, and the petitioner examined herself (CW1) and Meena Thakur (CW2). The respondent examined Mohit (RW1), Sahib Singh (RW2), himself (RW3) and Mukesh (RW4).

5. The learned Trial Court held that the relationship between the parties was not disputed. It was proved on record that the respondent and Ishwari had given birth to Muskan, which makes the petitioner's version probable that the respondent has married Ishwari Devi. The petitioner was forced to reside separately by the respondent's conduct. The respondent has sufficient income with him, and he can easily provide a maintenance of ₹10,000/- per month to the petitioner. Hence, the petition was allowed, and maintenance of ₹10,000/- per month was awarded to her.

6. Being aggrieved by the judgment passed by the learned Trial Court, the respondent filed a revision which was decided by the learned Additional Sessions Judge, Dehra (learned Revisional Court). Learned Revisional Court concurred with the findings recorded by the learned Trial Court that the relationship between the parties was not disputed. The petitioner has no source of

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income, whereas the respondent had sufficient income. Ishwari Devi was residing with the respondent and had given birth to Muskan. Therefore, the petitioner had sufficient reason to reside separately from the respondent and claim maintenance. The amount of maintenance awarded by the learned Trial Court was adequate, and no interference was required with the judgment of the learned Trial Court. Hence, the revision was dismissed.

7. Being aggrieved by the judgments and order passed by the learned Courts below, the respondent has filed the present petition asserting that the learned Courts below failed to appreciate the material on record. The petitioner had voluntarily left her matrimonial home, and she was residing separately without any reasonable cause. The respondent never neglected the petitioner, and the essential ingredient of Section 125 of Cr.P.C. was not satisfied. The respondent was already directed to pay maintenance of ₹2000/- per month to the petitioner, and he was regularly paying this amount. The petitioner had not produced any evidence of the respondent's income. The respondent is dependent upon his son and has no source of income. The statements of the witnesses were ignored. Therefore, it was prayed that the present petition be

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allowed and the judgments passed by the learned Courts below be set aside.

8. Mr Sanjeev Kumar Suri, learned counsel for the petitioner submitted that the learned Trial Court erred in awarding maintenance to the petitioner. She had voluntarily left her matrimonial home. There was no neglect or refusal on the respondent's part. The respondent had taken loans for the education of his children. He is an aged person dependent upon his son. The petitioner was running a PCO and taxi, and she has sufficient income to maintain herself. Learned Trial Court failed to consider these aspects, and learned Revisional Court mechanically affirmed the judgment of the learned Trial Court. Therefore, he prayed that the present petition be allowed and the judgments passed by the learned Courts below be set aside.

9. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

10. It is undisputed that the petitioner had filed a revision before the learned Revisional Court, which was dismissed by the learned Revisional Court. It was laid down by the Hon'ble Supreme Court in ***Krishnan Vs. In Krishnaveni (1997) 4 SCC 241,*** that the High

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Court can intervene under Section 482 of CrPC (corresponding to Section 528 of BNSS) when there is a grave miscarriage of justice or abuse of the process of the Court. It was observed:

> "**10.** Ordinarily, when revision has been barred by Section 397(3) of the Code, a person — accused/complainant — cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has *suo motu* power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is a grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and, in an appropriate case, even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of a criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed, and public justice can be ensured only when the trial is conducted expeditiously.

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11. In ***Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551: 1978 SCC (Cri) 10],*** a three-judge Bench was to consider the scope of the power of the High Court under Section 482 and Section 397(2) of the Code. This Court held that the bar on the power of revision was put to facilitate expedient disposal of the cases, but in Section 482, it is provided that nothing in the Code, which would include Section 397(2) also, shall be deemed to limit or affect the inherent powers of the High Court. On a harmonious construction of the said two provisions on this behalf, it was held that though the High Court has no power of revision in an interlocutory order, still the inherent power will come into play when there is no provision for redressal of the grievance of the aggrieved party. In that case, when allegations of defamatory statements were published in the newspapers against the Law Minister, the State Government decided to prosecute the appellant for an offence under Section 500 IPC. After obtaining the sanction, on a complaint made by the public prosecutor, cognisance of the commission of the offence by the appellant was taken to trial in the Sessions Court. Thereafter, the appellant filed an application to dismiss the complaint on the ground that the court had no jurisdiction to entertain the complaint. The Sessions Judge rejected all the contentions and framed the charges under Section 406. The Order of the Sessions Judge was challenged in revision in the High Court. On a preliminary objection raised on maintainability, this Court held that the power of the High Court to entertain the revision was not taken away under Section 397 or inherent power under Section 482 of the Code.

12. In ***V.C. Shukla v. State through CBI [1980 Supp SCC 92: 1980 SCC (Cri) 695: (1980) 2 SCR 380]*** (SCR at p. 393), a four-judge Bench per majority held that sub-section (3) of Section 397, however, does not limit at all the inherent powers of the High Court contained in Section 482. It merely curbs the revisional power given to the High Court or the Sessions Court under Section 397(1) of the Code. In the ***Rajan Kumar Machananda case [1990 Supp SCC 132: 1990 SCC (Cri) 537],*** the case related to the release of a truck from attachment,

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obviously on the filing of an interlocutory application. It was contended that there was a prohibition on the revision by operation of Section 397(2) of the Code. In that context, it was held that it was not reviewable under Section 482 in the exercise of inherent powers by operation of sub-section (3) of Section 397. On the facts in that case, it was held that by provisions contained in Section 397(3), the revision is not maintainable. In the ***Dharampal case [(1993) 1 SCC 435: 1993 SCC (Cri) 333],*** which related to the exercise of power to issue an order of attachment under Section 146 of the Code, it was held that the inherent power under Section 482 was prohibited. On the facts, in that case, it could be said that the learned Judges would be justified in holding that it was not revisable since it was a prohibitory interim order of attachment covered under Section 397(2) of the Code but the observations of the learned Judges that the High Court had no power under Section 482 of the Code were not correct in view of the ratio of this Court in ***Madhu Limaye case [(1977) 4 SCC 551: 1978 SCC (Cri) 10***] as upheld in ***V.C. Shukla case [1980 Supp SCC 92: 1980 SCC (Cri) 695 : (1980) 2 SCR 380]*** and also in view of our observations stated earlier. The ratio in the ***Deepti case [(1995) 5 SCC 751: 1995 SCC (Cri) 1020]*** is also not apposite to the facts in the present case. To the contrary, in that case, an application for discharge of the accused was filed in the Court of the Magistrate for an offence under Section 498-A IPC. The learned Magistrate and the Sessions Judge dismissed the petition. In the revision at the instance of the accused, on a wrong concession made by the counsel appearing for the State that the record did not contain allegations constituting the offence under Section 498-A, the High Court, without applying its mind, had discharged the accused. On appeal, this Court, after going through the record, noted that the concession made by the counsel was wrong. The record did contain the allegations to prove the charge under Section 498-A IPC. The High Court, since it failed to apply its mind, had committed an error of law in discharging the accused, leading to the miscarriage of justice. In that context, this Court held that the order of the Sessions Judge operated as a bar to entertain the application

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under Section 482 of the Code. In view of the fact that the order of the High Court had led to the miscarriage of justice, this Court had set aside the order of the High Court and confirmed that of the Magistrate.

13. The ratio of the ***Simrikhia case [(1990) 2 SCC 437: 1990 SCC (Cri) 327]*** has no application to the facts in this case. Therein, on a private complaint filed under Sections 452 and 323 IPC, the Judicial Magistrate, First Class, had taken cognisance of the offence. He transferred the case for inquiry under Section 202 of the Code to the Second-Class Magistrate, who, after examining the witnesses, issued a process to the accused. The High Court, exercising the power under Section 482, dismissed the revision. But subsequently, on an application filed under Section 482 of the Code, the High Court corrected it. The question was whether the High Court was right in reviewing its order. In that factual backdrop, this Court held that the High Court could not exercise inherent power for the second time. The ratio therein, as stated above, has no application to the facts in this case.

14. In view of the above discussion, we hold that though the revision before the High Court under sub-section (1) of Section 397 is prohibited by sub-section (3) thereof, inherent power of the High Court is still available under Section 482 of the Code and as it is paramount power of continuous superintendence of the High Court under Section 483, the High Court is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below. It remitted the case to the Magistrate for a decision on the merits after consideration of the evidence. We make it clear that we have not gone into the merits of the case. Since the High Court has left the matter to be considered by the Magistrate, it would be inappropriate at this stage to go into that question. We have only considered the issue of power and jurisdiction of the High Court in the context of the revisional power under Section 397(1) read with Section 397(3) and the inherent powers. We do not find any justification warranting interference in the appeal."

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11. This position was reiterated in ***Rajinder Prasad v. Bashir, (2001) 8 SCC 522***, wherein it was held:

> "...though the power of the High Court under Section 482 of the Code is very wide, the same must be exercised sparingly and cautiously, particularly in a case where the petitioner is shown to have already invoked the revisional jurisdiction under Section 397 of the Code. Only in cases where the High Court finds that there has been a failure of justice or misuse of judicial mechanism or procedure, a sentence or order was not correct, the High Court may, in its discretion, prevent the abuse of the process or miscarriage of justice by exercise of jurisdiction under Section 482 of the Code. It was further held, "Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of provisions of Section 397(3) or Section 397(2) of the Code."

12. A similar view was taken in ***Kailash Verma v. Punjab State Civil Supplies Corporation, (2005) 2 SCC 571***, and it was held:

> "5. It may also be noticed that this Court in ***Rajathi v. C. Ganesan [(1999) 6 SCC 326: 1999 SCC (Cri) 1118]*** said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilised as a substitute for second revision. Ordinarily, when a revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to revision before the High Court under Section 397(1) of the Criminal Procedure Code, as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is a serious miscarriage of justice

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and abuse of the process of the court or when mandatory provisions of the law are not complied with and when the High Court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court."

13. This position was reiterated in ***Shakuntala Devi v. Chamru Mahto*, *(2009) 3 SCC 310: (2009) 2 SCC (Cri) 8: 2009 SCC OnLine SC* 292**, wherein it was observed: -

> "**24.** It is well settled that the object of the introduction of sub-section (3) in Section 397 was to prevent a second revision to avoid frivolous litigation, but, at the same time, the doors to the High Court to a litigant who had lost before the Sessions Judge were not completely closed, and in special cases, the bar under Section 397(3) could be lifted. In other words, the power of the High Court to entertain a petition under Section 482 was not subject to the prohibition under sub-section (3) of Section 397 of the Code and was capable of being invoked in appropriate cases. Mr Sanyal's contention that there was a complete bar under Section 397(3) of the Code, debarring the High Court from entertaining an application under Section 482 thereof, does not, therefore, commend itself to us.
>
> **25.** On the factual aspect, the Magistrate came to a finding that the appellants were entitled to possession of the disputed plot. It is true that while making such a declaration under Section 145(4) of the Code, the Magistrate could have also directed that the appellants be put in possession of the same.
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> **26.** The question which is now required to be considered is whether the High Court was right in quashing the order passed by the Magistrate, which was confirmed by the Sessions Judge, on the ground that the application made by the appellants under Section 145(6) of the Code was barred firstly by limitation under Article 137 of the Limitation Act and also by virtue of Section 6 of the Specific Relief Act, 1963.

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14. Delhi High Court also took a similar view in ***Surender Kumar Jain v. State, ILR (2012) 3 Del 99*** and held: —

> "5. The issue regarding the filing of a petition before the High Court after having availed the first revision petition before the Court of Sessions has come up before the Supreme Court and this Court repeatedly. While laying that section 397(3) Cr. P.C. laid the statutory bar of the second revision petition, the courts have held that the High Court did enjoy inherent power under section 82 (sic) Cr. P.C. as well to entertain petitions even in those cases. But that power was to be exercised sparingly and with great caution, particularly when the person approaching the High Court has already availed a remedy of first revision in the Sessions Court. This was not that in every case the person aggrieved by the order of the first revision court would have the right to be heard by the High Court to assail the same order which was the subject matter of the revision before the Sessions Court. It all depends not only on the facts and circumstances of each case but also on whether the impugned order brought about a situation that is an abuse of the process of the court, there was a serious miscarriage of justice or the mandatory provisions of law were not complied with. The power could also be exercised by this Court if there was an apparent mistake committed by the revisional court. Reference in this regard can be made to the judgments of the Supreme Court i*n **Madhu Limave v. State of Maharashtra (1977) 4 SCC 551, State of Orissa v. Ram Chander Aggarwal, (1979) 2 SCC 305: AIR 1979 SC 87, Rai Kapoor v. State (Delhi Administration) 1980 Cri LJ 202, Krishnan v. Krishnaveni** and **Kailash Verma v. Punjab State Civil Supplies Corporation (2005) 2 SCC 571.**"*

15. It is apparent from the judgments that the High Court has a limited jurisdiction, and it can rectify a serious miscarriage of justice or a breach of a mandatory provision of law while exercising

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its jurisdiction under Section 528 of BNSS corresponding to Section 482 of Cr.P.C.

16. Respondent Bhagmal stated in his cross-examination that Ishwari was employed as a household help. He had not married Ishwari. Muskan is his daughter who is studying in class 10+2. She was born in the year 2002, and the name of her mother is Ishwari.

17. Mukesh (RW4), son of the parties, admitted in his cross-examination that Muskan is his sister who was born in the year 2002.

18. The statements of the respondent and his son prove that Ishwari Devi is residing in the respondent's house and she has given birth to a daughter, Muskan, from the respondent. This makes the petitioner's version probable that the respondent has solemnised a marriage with Ishwari Devi. It was laid down by this Court in ***Banti Devi versus Moti Ram, 1992 (2) Shim. L. C. 255*** that solemnising the second marriage during the subsistence of the first marriage will entitle the first wife to reside separately and claim maintenance. It was observed:

> "8. It is settled by now that a second marriage or keeping a mistress by the husband entitles his wife to live separately. Further, solemnising a second marriage when the first wife

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is living proves the neglect by the husband to maintain the first wife. (Please see ***Deochand v. State of Maharashtra and another, AIR 1974 SC 1488*** and ***Pellakuru Saymalamma @ Syamalamba v. Pellakuru Sambaiah and another, (1988) 2 Crimes, 768***). Therefore, I hold that Moti Ram has been neglecting to maintain Banti Devi, and she is entitled to a maintenance allowance from him."

19. Similar is the judgment in ***Rajathi vs. C Ganesan 1999 (6) SCC 326,*** wherein it was observed:

"The fact, however, remains in the present case that the husband is living with another woman. Proviso to sub-section (3) would squarely apply and justify the refusal of the wife to live with her husband.... Even though the wife was unable to prove that the husband had remarried, the fact remained that the husband was living with another woman. That would entitle the wife to live separately and would amount to neglect or refusal by the husband to maintain her.....

8. We may also have a look at the provisions of the Hindu Adoptions and Maintenance Act 1956, which provides for maintenance to a Hindu wife. Under Section 18 of this Act, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime. Under sub-section (2) she will be entitled to live separate from her husband without forfeiting her claim to maintenance,- (a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her; (b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband; (c) if he is suffering from a virulent form of leprosy; (d) if he has any other wife living; (e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere; (f) if he has ceased to be a Hindu by conversion to another religion; and

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> (g) if there is any other cause justifying her living separately. Under sub-section (3), a Hindu wife is not entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be Hindu by conversion to another religion. It will be apposite to keep these provisions in view while considering the petition under Section 125 of the Code.

20. Therefore, the petitioner wife had a reasonable cause for residing separately from the respondent and seeking maintenance from him.

21. Respondent Bhagmal stated in his cross-examination that he has 7-8 shops and 4-5 rooms at Ranital. He was running a hotel earlier. Mukesh (RW4) stated in his cross-examination that they have been running a business at Bhawanagar since 2002. They have a house consisting of 10-15 rooms and 2-3 shops at Ranital, which was rented. He admitted that the respondent had taken a limit of ₹18,00,000/for expanding his business. These admissions show that the respondent is a person having sufficient means. He is running a business at Bhawanagar and has rented a building with 10-15 rooms and 2-3 shops. He has also taken a loan for his business. Thus, the pleas taken by the respondent that he has no means to pay maintenance to the petitioner and that he had taken a loan for the education of his children cannot be accepted.

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22. The petitioner admitted in her cross-examination that she had purchased the land in Mohal Thakurdwara. She volunteered to say that it was gifted to her by Madan Lal, her brother. It was submitted that the petitioner has sufficient income to maintain herself. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***Rajathi v. C. Ganesan, (1999) 6 SCC 326,*** that words unable to maintain herself would include the means available to the wife when she was living with her husband and does not include the efforts made by her after desertion to survive. It was observed:

> "The words' unable to maintain herself' would mean that the means available to the deserted wife while she was living with her husband would not take within themselves the efforts made by the wife after the desertion to survive somehow. Section 125 is enacted on the premise that it is the obligation of the husband to maintain his wife, children and parents. It will, therefore, be for him to show that he has no sufficient means to discharge his obligation and that he did not neglect or refuse to maintain them or any one of them."

23. This position was reiterated in ***Rajnesh v. Neha, (2021) 2 SCC 324: (2021) 2 SCC (Civ) 220: 2020 SCC OnLine SC 903,*** wherein it was observed:

> **90.** The courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The courts have provided guidance on this issue in the following judgments:

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90.1. In ***Shailja* v. *Khobbanna*** [***Shailja* v. *Khobbanna*, *(2018) 12 SCC 199: (2018) 5 SCC (Civ) 308***; See also the decision of the Karnataka High Court in ***P. Suresh v. S. Deepa, 2016 SCC OnLine Kar 8848: 2016 Cri LJ 4794 (Kar)***], this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. [***Chaturbhuj v. Sita Bai, (2008) 2 SCC 316: (2008) 1 SCC (Civ) 547: (2008) 1 SCC (Cri) 356***] Sustenance does not mean, and cannot be allowed to mean, mere survival. [***Vipul Lakhanpal v. Pooja Sharma, 2015 SCC OnLine HP 1252: 2015 Cri LJ 3451***]

90.2. In ***Sunita Kachwaha v. Anil Kachwaha [Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715: (2015) 3 SCC (Civ) 753: (2015) 3 SCC (Cri) 589***] the wife had a postgraduate degree and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

90.3. The Bombay High Court in ***Sanjay Damodar Kale v. Kalyani Sanjay Kale [Sanjay Damodar Kale v. Kalyani Sanjay Kale, 2020 SCC OnLine Bom 694]*** while relying upon the judgment in ***Sunita Kachwaha [Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589]***, held that neither the mere potential to earn nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

90.4. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is

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> not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in ***Chander Parkash v. Shila Rani [Chander Parkash v. Shila Rani, 1968 SCC OnLine Del 52: AIR 1968 Del 174]***. The onus is on the husband to establish with the necessary material that there are sufficient grounds to show that he is unable to maintain the family and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the court.
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> **90.5.** This Court in ***Shamima Farooqui v. Shahid Khan [Shamima Farooqui v. Shahid Khan, (2015) 5 SCC 705: (2015) 3 SCC (Civ) 274 : (2015) 2 SCC (Cri) 785]*** cited the judgment in ***Chander Parkash [Chander Parkash v. Shila Rani, 1968 SCC OnLine Del 52: AIR 1968 Del 174]*** with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife.

24. Therefore, the maintenance cannot be denied to the petitioner because she is making efforts to survive.

25. It was submitted that a maintenance of ₹2000/- per month is being awarded to the petitioner, which was not considered by the learned Courts below. It was laid down by the Hon'ble Supreme Court in the ***Rajnesh*** (supra) that the wife can claim maintenance under different enactments, but the Courts have to consider the maintenance awarded under one Act while awarding maintenance to a wife under a different Act. Therefore, even if the maintenance of ₹2000/- is considered, the petitioner

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would be getting a total amount of ₹12000/- per month as maintenance, which cannot be said to be excessive considering the minimum wages fixed by the State Government and the respondent's income.

26. Therefore, the learned Courts below had rightly awarded the maintenance to the petitioner. There is no grave error justifying the interference while exercising the inherent jurisdiction of the Court. Hence, the present petition fails and is dismissed.

27. The petition stands disposed of, so also the pending application(s), if any.

(Rakesh Kainthla)
Judge

19th June, 2026
(Nikita)